IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

M.F.A.No.1045 of 1996

O.P.(M.V.) NO.317/1993 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, PUNALUR.

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APPELLANT: PETITIONER:-

P.VIJAYAN PILLAI, S/O.V.PONNAN PILLAI,
CHANGAZAVELIL VEEDU, VETTUVELI MURI,
HARIPAD (P.O.), ALLEPPEY.

BY ADV. SRI.B.SURESH KUMAR

RESPONDENTS:RESPONDENTS:-

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* 1. S.S.S.PICHAI KANI
(MUHAMMADIYA LORRY SERVICE)
32, SULAIMAN NABI PALLIVASAN STREET,
SHENCOTTAH, TAMILNADU (**DIED**)

* 2. S.S.S.P.SHEIK MUHAMMED HADER
S/O.S.S.S.PICHAIKANI OF -DO - (LR OF DECEASED 1ST RESPONDENT)

3. M/S.UNITED INDIA INSURANCE CO. LTD., BEACH ROAD, KOLLAM.

** ADDITIONAL 4TH RESPONDENT IMPLEADED:

ADDL.R4. PEER MOHAMMED, S/O.S.S.S.PICHAIKANI,
32, SULAIMAN NABI PALLIVASAL STREET,
SHENCOTTAI, TAMILNADU.

* (VIDE ORDER DATED 29.7.2005 IN I.A.NO.2166/2005,
S.S.S.P.SHEIK MUHAMMED HADER, S/O.S.S.S.PICHAIKANI,
32, SULAIMAN NABI PALLIVASAL STREET,
SHENCOTTAI, TAMIL NADU, THE 2ND RESPONDENT IN THE M.F.A.,
IS RECORDED AS THE LEGAL REPRESENTATIVE OF THE DECEASED
1ST RESPONDENT).

** (ADDITIONAL 4TH RESPONDENT IS IMPLEADED AS PER ORDER
DATED 29.7.2005 IN I.A.NO.2166 OF 2005)

R2 BY ADV. SRI.K.C.CHARLES
SRI.A.RAJAGOPALAN
R3 BY ADV. SRI.SIBY MATHEW
SMT.P.A.REZIYA

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY HEARD ON 29/03/2007, ALONG WITH M.F.A.NO.1276 OF 1996, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.F.A.Nos.1045 of 1996-F & 1276 of 1996-B

Dated, this the 29th day of March, 2007

JUDGMENT

M.F.A.No.1045 of 1996 is filed by the petitioner in O.P.(M.V.).No.317 of 1993 on the file of Motor Accidents Claims Tribunal, Punalur claiming additional compensation. M.F.A.No.1276 of 1996 is filed by the owner of the vehicle challenging the finding of the Tribunal on the question of negligence, quantum and also that part of the award by which the Tribunal exonerated the Insurer.

2. The parties will be referred to as arrayed in the Original Petition. The petitioner filed the Original Petition claiming compensation alleging that he sustained injuries in a motor vehicle accident. It was alleged that he met with an accident at about 3.45 A.M. on 25.08.1989 involving a lorry bearing registration No.TMN 212. Admittedly the petitioner was travelling in a Goods Vehicle as owner of the goods. He claimed compensation against the respondents. The owner and driver disputed negligence and quantum. The Insurer denied its liability to pay compensation as the petitioner being a gratuitous

passenger in a Goods vehicle is not entitled to get any compensation from the Insurer. The Tribunal, after trial, found that the accident occurred due to the negligence of the driver. It was found that the petitioner is entitled to get a total compensation of Rs.25,000/-. It was further found that the petitioner being a passenger in a Goods Vehicle, the owner and driver alone are liable to pay compensation as the accident occurred while the provisions of the Motor Vehicles Act, 1939 was in force.

3. The learned counsel appearing for the owner of the vehicle, appellant in M.F.A.1276 of 1996, has argued that the finding of the Tribunal that the accident occurred due to the negligence of the driver of the lorry is unsustainable. The appellant has denied the incident itself. The quantum of compensation awarded was also disputed.

4. The evidence on record shows that in fact the lorry bearing registration No.TMN 212 was involved in a road traffic accident at 3.45 A.M. on 25.08.1989. The petitioner was admitted in a hospital at Tamil Nadu. Subsequently, he was treated in Government Hospital at Haripad. The petitioner gave evidence as P.W.1. He examined independent witnesses also to

prove the incident. Though the driver of the lorry was examined as R.W.1, the Tribunal found, which is supported by the evidence of P.W.1, that the accident occurred due to the negligence of the driver of the lorry. It is a finding of fact, based on good evidence. The petitioner claimed an amount of Rs.50,000/- as compensation. The Tribunal discussed the evidence, which includes Exhibit A16 which shows that there is 5% permanent disability to the petitioner. But, instead of awarding compensation under different heads, awarded an amount of Rs.25,000/- as a lumpsum amount as compensation to the petitioner under no fault liability as provided under Section 140 of the Motor Vehicles Act, 1988.

5. The petitioner is also challenging the quantum of compensation. According to him, he is entitled to get more amount.

6. The medical certificate produced by the petitioner shows that he sustained only three superficial injuries. It is true that subsequently he was got examined by a Medical Board, who assessed the disability of the petitioner at 5%. But that alone is not sufficient to hold that he is entitled to more that what was awarded by the Tribunal. So, I do not find any reason to award

more compensation. Also equally unsustainable is the contention raised by the counsel for the owner of the vehicle that the compensation awarded is exorbitant. So, that finding is also to be confirmed.

7. The petitioner had himself admitted that he was travelling in the Goods Vehicle as the owner of the goods. There is no evidence before the Tribunal to show that the insured had paid any additional premium for any passenger. According to the Insurer, since the owner has not paid any additional premium, it is not liable to pay compensation for a passenger in a Goods vehicle. Since the matter arose under the provisions of the Motor Vehicles Act of 1939, the legal position is clear. Unless there is additional premium, the Insurer is not liable to pay compensation for the injuries sustained by a person travelling in a Goods Vehicle. Therefore, the finding of the Tribunal that the owner and driver alone are liable is to be confirmed. There is no merit in these appeals and the award of the Tribunal is only to be confirmed.

8. In the result, these appeals are dismissed. C.M.P.No.4611 of 1996 in M.F.A.No.1276 of 1996 also shall stand dismissed.

9. Learned counsel appearing for the owner and also the claimant have argued that even if the appeals are dismissed, this Court may direct the Insurer to pay the amount and then direct the Insurer to recover it from the owner of the vehicle. They relied on the decision reported in **Salija** v. **Unnikrishnan** (2004 (2) KLT 818). **Salija's case** (supra) was decided on 27.5.2004. A Division Bench of this Court relying on a decision reported in **National Insurance Co. Ltd.** v. **Baljit Kaur** (AIR 2004 SC 1340) held that the Insurance Company shall pay the compensation awarded and recover the amount from the insured in execution of the award.

10. The learned counsel appearing for the Insurance Company has argued that in view of the decision rendered by a 3 Judges' Bench in **National Insurance Co. Ltd.** v. **Chinnamma** (2004 [3] KLT 397), such a direction cannot be issued. It is further argued that in this case the Tribunal itself exonerated the Insurer from the liability to pay any amount.

11. **Chinnamma's case** (supra) was decided on 25.8.2004. In paragraph 14 of the judgment, the apex Court has referred to the decision reported in **Baljit Kaur's case** (supra), but finally the Supreme Court allowed the appeal and set aside

the award passed by the Tribunal, by which the Insurer was directed to pay the amount. No direction was issued by the apex Court to the Insurer to pay the amount and then recover it from the owner. Being a 3 Judges' Bench decision, which was rendered after the decision in **Salija's case** (supra), I respectfully follow the principle laid down in **Chinnamma's case** (supra). It is to be noted here that the Tribunal itself exonerated the Insurance Company from its liability. So, the prayer of the appellants in these appeals, who are the claimant and owner, cannot be allowed. The prayer is rejected.

K.Padmanabhan Nair
Judge

vku/-